

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PATRICIA ALCANTAR,

3:14-cv-00428-RCJ-WGC

Plaintiff,

ORDER

v.

FIRST TRANSIT, et. al.

Defendants.

Before the court is Plaintiff's Application to Proceed in Forma Pauperis (Doc. # 1)¹ and pro se Complaint (Doc. # 1-1).

I. APPLICATION TO PROCEED IN FORMA PAUPERIS

A person may be granted permission to proceed in forma pauperis if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915; *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (this provision applies to all actions filed in forma pauperis, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person, who is unable to prepay the fees in a civil case, may apply to the Court for authority to proceed *in forma pauperis*. The application shall be made on the form provided by the Court and shall include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities."

¹ Refers to court's docket number.

1 LSR 1-1.

2 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some
3 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
4 (quoting *Jefferson v. United States*, 277 F.2d 823, 825 (9th Cir. 1960)). A litigant need not “be
5 absolutely destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont De Nemours &*
6 *Co.*, 335 U.S. 331, 339 (1948).

7
8 The court has reviewed Plaintiff’s application and it appears she is unable to pay the
9 filing fee. Therefore, her application to proceed in forma pauperis (Doc. # 1) is **GRANTED**.

10 **II. SCREENING**

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12 28 U.S.C. § 1915 provides: “the court shall dismiss the case at any time if the court
13 determines that ... the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon
14 which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune
15 from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed in
16 forma pauperis whether or not the plaintiff is incarcerated. *Lopez*, 203 F.3d at 1129; *see also*
17 *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

18
19 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
20 provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard
21 under section 1915(e)(2)(B) when reviewing the adequacy of the complaint. *See Resnick v.*
22 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (citation omitted). Review under 12(b)(6) is
23 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719,
24 723 (9th Cir. 2000).

25
26 In reviewing a complaint under this standard, the court must accept as true the allegations
27 of the complaint, *Hosp. Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 740 (1976), construe
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1 the pleadings in the light most favorable to plaintiff, and resolve all doubts in the plaintiff's
2 favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Allegations in pro se complaints are held
3 to less stringent standards than formal pleadings drafted by lawyers, and must be liberally
4 construed. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Hamilton v. Brown*, 630 F.3d 889, 893
5 (9th Cir. 2011).
6

7 A complaint must contain more than a "formulaic recitation of the elements of a cause of
8 action," it must contain factual allegations sufficient to "raise a right to relief above the
9 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading
10 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
11 a legally cognizable right of action." *Id.* (citation omitted). At a minimum, a plaintiff should state
12 "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570; *see also Ashcroft*
13 *v. Iqbal*, 556 U.S. 662, 678 (2009).
14

15 A dismissal should not be without leave to amend unless it is clear from the face of the
16 complaint that the action is frivolous and could not be amended to state a federal claim, or the
17 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
18 1103, 1106 (9th Cir. 1995) (dismissed as frivolous); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th
19 Cir. 1990).
20

21 In her complaint, Plaintiff names as defendants First Transit and Paul Earnshaw.
22 (Doc. # 1-1 at 1-2.) She brings her action under Title VII of the Civil Rights Act. She alleges
23 that Defendants denied her requests to attend various religious events, which Defendants had
24 previously agreed to allow (*Id.* at 4.) She further avers that Paul retaliated against her by
25 changing her schedule so that she would not be able to attend religious meetings, did not allow
26 her to attend work meetings, and denied her request to take her daughter to a doctor's
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1 appointment. (*Id.* at 5.) Plaintiff indicates that she was fired from her job. (*Id.* at 9.) She attaches
 2 a right to sue letter issued by the United States Equal Employment Opportunity Commission. (*Id.*
 3 at 10.)

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 5 Construing Plaintiff's allegations liberally and in her favor, the court finds Plaintiff states
 6 a colorable claim for religious discrimination and retaliation under Title VII of the Civil Rights
 7 Act of 1964. *See* 42 U.S.C. § 2000e, *et. seq.*, *see also* 42 U.S.C. § 2000e-2 (making it unlawful
 8 for an employer to discharge a person on the basis of religion); 42 U.S.C. § 2000e(j) (defining
 9 "religion" as "include[ing] all aspects of religious observance and practice, as well as belief,
 10 unless an employer demonstrates that he is unable to reasonably accommodate an employee's or
 11 prospective employee's religious observance or practice without undue hardship on the conduct
 12 of the employer's business"); 42 U.S.C. § 2000e-3(a) (employer may not take adverse
 13 employment action against employee who has opposed a practice made unlawful by Title VII).
 14 Therefore, Plaintiff's Complaint shall **PROCEED**.

15 16 17 **III. CONCLUSION**

18 (1) Plaintiff's application to proceed in forma pauperis (Doc. # 1) is **GRANTED**;

19 (2) The action shall **PROCEED** and the Clerk shall **FILE** Plaintiff's Complaint (Doc. #
 20 1-1). Plaintiff is permitted to maintain this action to conclusion without the necessity of
 21 prepayment of fees or costs or the giving of security therefor. The order granting in forma
 22 pauperis status does not extend to the issuance of subpoenas at government expense.


23
 24 (3) Pursuant to Federal Rule of Civil Procedure 4(c)(3), the Clerk shall **ISSUE** a
 25 summons for each defendant, and **SEND** the same, along with a copy of the Complaint (Doc. #
 26 1-1) to the U.S. Marshal for service. The Clerk shall also **SEND** to Plaintiff the USM-285 forms
 27 for each defendant, one copy of the complaint and a copy of this Order. Plaintiff shall then have
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1 **TWENTY DAYS FROM THE DATE OF THIS ORDER** to furnish to the U.S. Marshal's
2 Office the completed USM-285 forms. Within **TWENTY DAYS** after receiving from the U.S.
3 Marshal a copy of the returned USM-285 form showing whether service has been accomplished,
4 Plaintiff must file a notice with the court stating whether or not the defendants have been served.
5 If the defendant(s) have not been served, and Plaintiff wishes to have service again attempted on
6 an unserved defendant, then a motion must be filed with the court identifying the unserved
7 defendant(s) and specifying a more detailed name and/or address for said defendant(s), or
8 indicating whether some other manner of service should be attempted. This shall be done within
9 **TWENTY DAYS** of the date Plaintiff is notified by the U.S. Marshal that service has not been
10 accomplished as to the defendant. Plaintiff is advised that pursuant to Federal Rule of Civil
11 Procedure 4(m), she has 120 days from the date the complaint is filed to effectuate service;

12
13 (4) Once the defendant(s) appear, Plaintiff shall serve upon defendant(s) or, if appearance
14 has been entered by counsel, upon the attorney(s), a copy of every pleading, motion or other
15 document submitted for consideration by the court. Plaintiff shall include with the original paper
16 to be filed with the Clerk of the court a certificate stating the date that a true and correct copy of
17 the document was mailed to the defendant(s) or counsel for the defendant(s). The court may
18 disregard any paper received by a district judge or magistrate judge which has not been filed with
19 the Clerk of the court, and any paper received by a district judge or magistrate judge or Clerk
20 which fails to include a certificate of service.

21 **IT IS SO ORDERED.**

22 August 22, 2014.

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25 WILLIAM G. COBB
26 UNITED STATES MAGISTRATE JUDGE
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